

While subsection (1) thus extends the area of operation of the prospectus provisions of the Act, subsection (2) excludes from it offers which are essentially the domestic concern of the persons making and receiving them.

Subsection (2) provides:

The foregoing subsection shall not be taken as requiring any offer or invitation to be treated as made to the public if it can properly be regarded, in all the circumstances, as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation, or otherwise as being a domestic concern of the persons making and receiving it, and in particular —

- (a) a provision in a company's articles prohibiting invitations to the public to subscribe for shares or debentures shall not be taken as prohibiting the making to members or debenture holders of an invitation which can properly be regarded as aforesaid; and
- (b) the provisions of this Act relating to private companies shall be construed accordingly.

The last part of the subsection, beginning with the words 'and in particular,' safeguards the position of the private company: it places it beyond doubt that in such a company a pre-emptive offer of a new issue of shares or debentures to the existing holders is not caught by subsection (1) of section 55 and, consequently, does not infringe the prohibition of section 28(1)(c)."

(Section 28(1)(c) is identical to Article 1(c).) In our own Act, section 4(6) under the definition of "unlimited company" is now set out:

"Any reference in this Act to offering shares or debentures to the public shall, unless the contrary intention appears, be construed as including a reference to offering them to any section of the public, whether selected as clients of the person issuing the prospectus or in any other manner; but a *bona fide* offer or invitation with respect to shares or debentures shall not be deemed to be an offer to the public if it is —

- (a) an offer or invitation to enter into an underwriting agreement;
- (b) made to a person whose ordinary business it is to buy and sell shares or debentures whether as principal or agent;
- (c) made to existing members of debenture holders of a corporation and relates to shares in or debentures of that corporation; or
- (d) made to existing members of a company within the meaning of section 270 and relates to shares in the corporation within the meaning of that section."

There can be no doubt that the offer to the nine named Bumiputras is not within categories (a) to (d). The word "public" is not defined in the Act and except where otherwise expressly provided should be given its ordinary meaning. We would respectfully disagree and hold that the decision of April 7, 1973 is in contravention of Article 1(c).

It also follows therefrom that it is not enough for the Appellants merely to claim acceptance of the New Economic Policy. The decision must also be in accord with the Articles and it has not been shown to be. There is the admitted failure to offer or give notice to the respondent and other shareholders in contravention of Article 46. We therefore dismiss the appeal with costs here and in the court below.

We would before departing make one observation, particularly with reference to that ground which averred the judge in error in going outside the pleadings. We need not now say more than that it is clear from what we have said that the respondent has proved both

A issues namely, an issue to the public in contravention of Article 1(c) and a failure to offer or notify them of the proposed issue. These two issues were all that mattered and need not have entailed any of the evidence that had been adduced. The appellants were evasive and both they and the secretary failed to display the openness which was to be expected of them. B What was the reason for pretending ignorance of the decision of April 7, 1973? Why put the plaintiff to proof of matters which could not be denied? Was it not the easiest thing for them to say —

- 1) By a majority decision of the directors, it was decided to allot 31,500 shares to these nine named Bumiputras.
- C 2) We believe this in accord with our Resolution of November 29, 1972.
- 3) We believe this not to be contrary to the Articles.
- 4) If it is, then we would put the matter before the General Meeting for approval and consequential amendment of the Articles.
- D

We do not accede to a request for a new trial. We repeat the appeal is dismissed with costs.

Ali and Raja Azlan Shah F.JJ. concurred.

E *Appeal dismissed.*

Solicitors: A. K. J. D'Cruz & Co.; Dulip Singh & Co.

F PUBLIC PROSECUTOR v. FAN YEW TENG

[O.Cr.J. (Abdul Hamid J.) January 13, 1975]

[Kuala Lumpur — Criminal Trial No. 4 of 1974]

Criminal Law and Procedure — Sedition — Freedom of Speech — Seditious tendency — Whether speech has tendency to excite disaffection — Sedition Act, 1948, ss. 3 and 4.

G The accused was charged for publishing a seditious publication i.e. an article under the caption "Alliance Policy of Segregation 'Evidence Galore' listed by Dr. Ooi" in the December 1970 issue of the *Rocket* an official organ of the Democratic Action Party, giving the full text of a speech delivered by Dr. Ooi Kee Saik.

H **Held:** (1) on the evidence produced by the prosecution the court was satisfied beyond reasonable doubt that the accused published the article which was the subject of the charge;

(2) the speech read as a whole, even accepting it in a somewhat larger and broader latitude of the type of criticism expected from the leader of the opposition party making a speech political in nature, and bearing in mind the limits governing the right to freedom of speech and expression, had gone beyond what is sanctioned by the law and had in fact a seditious tendency;

I (3) the accused was therefore guilty of the offence charged and should be fined \$2,000 in default 6 months imprisonment.

Editorial Note: Reference may be made to *Public Prosecutor v. Ooi Kee Saik & Ors.* [1971] 2 M.L.J. 108, on appeal to the Federal Court *Fan Yew Teng v. Public Prosecutor* [1971] 2 M.L.J. 271 and on further appeal to the Privy Council *Public Prosecutor v. Fan Yew Teng* [1973] 2 M.L.J. 1.

Cases referred to:-

- (1) *Public Prosecutor v. Oie Hee Koi and Associated Appeals* [1968] 1 M.L.J. 148.
- (2) *Wallace-Johnson v. The King* [1940] A.C. 231, 240.
- (3) *Queen Empress v. Balagangadhar Tilak* (1897) I.L.R. 22 Bom. 112.
- (4) *Burns v. Mansley* (1949) 79 C.L.R. 101.
- (5) *Niharendu Majmudar v. King-Emperor* [1942] P.C.R. 38.
- (6) *Kodar Nath v. State of Bihar* A.I.R. 1962 S.C. 955.
- (7) *King Emperor v. Sadshir Narayan* L.R. 74 I.A. 89.
- (8) *Queen Empress v. Ambra Prasad* (1898) I.L.R. 20 All. 55, 69.
- (9) *Manibon v. Emperor* A.I.R. 1933 Bom. 65, 67.

CRIMINAL TRIAL.

Gunn Chit Tuan (Senior Federal Counsel) and *Abdullah Ngah* (Senior Federal Counsel) for the Public Prosecutor.

Yeap Ghim Guan for the accused.

Abdul Hamid J.: The accused is charged with an offence under section 4(1)(c) of the Sedition Act, 1948 for publishing a seditious publication namely, an article under the caption "Alliance Policy of Segregation 'Evidence Galore' listed by Dr. Ooi" at page 8 of the December 1970 issue of the "Rocket" (English edition) an official organ of the Democratic Action Party. The full text of the speech is as follows:—

"Tonight's dinner is in celebration of Sdr. Lim Kit Siang's release from detention by the Alliance Government. While it is a matter for celebration, it is also an occasion to highlight the grave Alliance error in putting away a man whose speeches during the last election campaign, especially his warnings have been more than borne out by the events since then. To say that Sdr. Lim Kit Siang's arrest was a mindless over-reaction on the part of the Alliance Government is to be kind to the Alliance Government. The fact that a true Malaysian like Sdr. Lim Kit Siang can be summarily put away without trial, is indeed a very sad testimony to the way democracy is being practised in this country.

The question I keep asking myself, and I am sure there must be thousands of other thinking people in this country who feel the same way that I do, in this: 'Is the Alliance Government making any headway in the problem of forging a new Malaysian nation, of creating a Malaysian identity which truly and honestly reflects the various racial strands in our country?' The answer, sad to say, is a firm and categorical NO. And one of the main reasons for this is because the Alliance Government practises a policy of segregation. While we in the D.A.P. preach a sincere and honest policy of integration, the Alliance policy merely pays lip service to it.

There is evidence galore of the Alliance policy of segregation. No. 1. Take our Malaysian Army. New and better battalions are being formed from members of one ethnic group. Here you have an excellent opportunity for integration in a vital part of our national structure but this opportunity is being missed.

No. 2. New police contingents. Here again recruitment mainly form one ethnic group. Another excellent opportunity for integration being missed.

No. 3. Schools, colleges and universities are being organised by different ethnic groups, and everybody is moving along his own separate path. Therefore, the cleavage between our future leaders and intellectuals will be all that more difficult to bridge in years to come.

No. 4. Public housing. Another avenue for integration not being exploited. Instead, housing and shopping complexes for one ethnic group are still being built all over the country.

A No. 5. Land Schemes. Vast land schemes with real opportunities for people of all races to live and work and grow up together. Here again a golden opportunity being missed.

No. 6. Gigantic business and industrial concerns are being organised, not for the benefit of ALL poor Malaysians, but again only for the benefit of one ethnic group. The latest of these is the National Corporation. Even the Prime Minister, Tun Abdul Razak, says blatantly that this is for the benefit of one ethnic group, although this huge multimillion dollar Corporation is called a 'national' corporation. Can't the Alliance Government imagine for a minute what the reaction of the country will be, and the far-reaching implication of calling this huge corporation a 'national' corporation when it serves the interests of only one ethnic group? Is it being suggested that other groups in this country are not part of the national structure? Or is this another bad example of governmental arrogance?

C Therefore, while we in the D.A.P. strive for a policy of integration, the formation of a solid infra-structure, a solid mesh-work, which will make it physically impossible for anyone in this country to act and to behave in any way except as a Malaysian citizen, the Alliance Government prefers to hold tea-parties.

The D.A.P. is a clear-cut party with a clear-cut policy. But more than anything else, the D.A.P. is a pro-Malaysian party, pro-every single Malaysian citizen irrespective of his racial origin. In fact, the more exotic his racial origin, the more he is to be welcomed because in essence we are multi-racial.

E It seems obvious to me that if our nation is to survive, in fact if any nation is to survive, then we must have a common denominator. A Malaysian citizen is a Malaysian citizen, full stop, and without a whole list of restrictive clauses. Therefore, whenever, there are soothing but unnecessary pronouncements by Alliance ministers to the effect that 'there is a place for all under the Malaysian sun', one begins to suspect that there are people in high places who do not agree that we all have a common denominator, that these people may be thinking in terms of comfortable shady places for one group of citizens, and hot uncomfortable places for other groups of citizens."

F On the evidence produced by the prosecution, it is proved to my satisfaction that on November 22, 1970, Dr. Ooi Kee Saik delivered a speech the full text of which was published in the "Rocket" December 1970 issue (English edition) at a dinner at the Sun Hoe Peng Restaurant, Penang, to celebrate the release from detention of Lim Kit Siang the Secretary General of the D.A.P. The dinner was attended by party officials, members and supporters including the accused.

H I shall now refer to the statement made by the accused to Supt. C.C. Stevenson. Encik Yeap counsel for the accused objected to its admissibility on the ground that the statement offended section 113 of the Criminal Procedure Code in that it was made in the course of police investigation. In my view the statement is clearly admissible under section 75 of the Internal Security Act, 1960. I was satisfied that the statement was made voluntarily and had not been caused by any inducement, threat or promise in the context referred to in paragraph (a) of the proviso to subsection (1) of section 75. It is also established that the accused made the statement before he was arrested and therefore section 75(1)(b) cannot apply.

The statement reveals that at the material time the accused was the Deputy Secretary General and the editor of the "Rocket." In his capacity as editor, he received articles and texts of speeches by party leaders and officials for publication. After scrutiny he would pass the articles for printing.

The accused attended a subscription dinner organised by the Penang Branch of the D.A.P. at the Sun Hoe Peng Restaurant, Penang, on the night of November 22, 1970. After Dr. Ooi delivered the speech the accused received from him a duplicate typewritten copy of the speech and the same was published without any alteration. The statement also reveals that the "Rocket" had a circulation of about 8,000 copies in English, 12,000 in Chinese and about 3,000 to 4,000 in Tamil and was sold for 20 cents a copy.

The prosecution also produced evidence to show that Lee Lam Thye, the Organising Secretary, applied for the issue of the English version of the "Rocket." The accused was stated to be the publisher and a permit under section 7(1) of the Printing Press Ordinance, 1948, was issued (P3 and P4). One of the prosecution witnesses, Miss Chia Sai Teng, a clerk employed by Life Printers, testified that the accused handed her a manuscript in connection with the printing of the "Rocket." She also testified that the December 1970 issue of the "Rocket" was printed by Life Printers.

After carefully considering the whole of the evidence produced by the prosecution, I am satisfied beyond any reasonable doubt that the accused published the article which is the subject of the charge.

Before I deal with the law pertaining to sedition, I propose to consider the question of sanction raised by the defence. It is submitted that the Public Prosecutor's sanction to prosecute as required under the Act has not been produced. Evidence was, however, led by the prosecution to show that A.S.P. Shingara Singh (PW2) applied for a warrant for the arrest of the accused after he had received the sanction from the Attorney General.

Section 5 of the Act does not speak of sanction but provides for written consent of the Public Prosecutor. The defence did not deny that consent was in fact produced when the accused was first charged in the lower court.

To my mind there is no merit in the defence contention. The short answer to this question may be found in the case of *Public Prosecutor v. Oie Hee Koi and Associated Appeals*⁽¹⁾ where Lord Hodson delivering the majority judgment said —

"...It was further argued that under section 80 of the Act the consent of the public prosecutor to the prosecution should have been and was not obtained. The answer to this objection is that the public prosecutor was himself the prosecutor and his consent is implicit in his action. The proviso in section 80 requiring consent is applicable where prosecutions take place, e.g., before a sessions court and the public prosecutor is not the actual prosecutor."

In the instant case the Deputy Public Prosecutor himself is prosecuting. Therefore the consent of the Public Prosecutor is, I think, implicit.

I shall now deal with the law. The offence of sedition in this country is contained in the Sedition Act, 1948. Section 4(1) of the Act, the relevant section for purposes of this case, reads —

"Any person who — ... (c) ... publishes any seditious publication ... shall be guilty of an offence."

A The word "seditious" is defined under section 2 —

"when applied to or used in respect of any act, speech, words, publication or other thing qualifies the act, speech, words, publication or other thing as one having a seditious tendency;"

The words "seditious tendency" are defined to mean —

B "(a) to bring into hatred or contempt or excite disaffection against any Ruler or against any Government;

(b) to excite the subjects of any Ruler or the inhabitants of any territory governed by any Government to attempt to procure in the territory of the Ruler or governed by the Government, the alteration, otherwise than by lawful means, of any matter as by law established;

C "(c) to bring into hatred or contempt or to excite disaffection against the administration of justice in Malaysia or in any State;

(d) to raise discontent or disaffection amongst the subjects of the Yang di-Pertuan Agong or of the Ruler of any State or amongst the inhabitants of Malaysia or of any State; or

D "(e) to promote feelings of ill-will and hostility between different races or classes of the population of Malaysia; or

(f) to question any matter, right, status, position, privilege, sovereignty or prerogative established or protected by the provision of Part III of the Federal Constitution or Article 152, 153 or 181 of the Federal Constitution."

E Paragraph (f) is a new paragraph introduced by an amendment made under the Emergency (Essential Powers) Ordinance No. 45/70 which came into force on August 10, 1970 promulgated by Yang Dipertuan Agong on August 3, 1970 following the issue by Yang Dipertuan Agong of a proclamation of Emergency on May 15, 1969 [P.U.(A)145/1969].

Ordinance No. 45 also amended section 3(2) of the Act which now reads —

F "3(2) Notwithstanding anything in sub-section (1) an act, speech, words, publication or other thing shall not be deemed to be seditious by reason only that it has a tendency —

(a) to show that any Ruler has been misled or mistaken in any of his measures;

G "(b) to point out errors or defects in any Government or constitution as by law established (except in respect of any matter, right, status, position, privilege, sovereignty or prerogative referred to in paragraph (f) of sub-section (1) otherwise than in relation to the implementation of any provision relating thereto) or in legislation or in the administration of justice with a view to the remedying of the errors or defects;

H "(c) except in respect of any matter, right, status, position, privilege, sovereignty or prerogative referred to in paragraph (f) of sub-section (1) —

(i) to persuade the subjects of any Rulers or the inhabitants of any territory governed by any Government to attempt to procure by lawful means the alteration of any matter in the territory of such Government as by law established; or

(ii) to point out, with a view to their removal, any matters producing or having a tendency to produce feelings of illwill and enmity between different races or classes of the population of the Federation,

if the act, speech, words, publication or other thing has not otherwise in fact a seditious tendency."

No amendment was made to section 3(3) which reads —

"3(3) For the purpose of proving the commission of any offence against this Act the intention of the person charged

at the time he did or attempted to do or made any preparation to do or conspired with any person to do any act or uttered any seditious words or printed, published, sold, offered for sale, distributed, reproduced or imported any publication or did any other thing shall be deemed to be irrelevant if in fact the act had, or would, if done, have had, or the words, publication, or thing had a seditious tendency."

Encik Yeap submitted that by reason of the amendment there are now two types of sedition, (a) sedition akin to one at common law, and, (b) a form of sedition where the words "seditious tendency" are given a highly artificial meaning. It is the defence's contention that although by reason of section 3(1)(f), criticism as to implementation of any matter, right, status, position, privilege, sovereignty or prerogative established or protected by the provisions of Part III of the Federal Constitution or Article 152, 153 or 181 of the Federal Constitution may not by reason of section 3(1)(f) of the Act be raised, the common law sedition is still in *pari materia* with our law of sedition. The argument advanced before this court is substantially similar to that put forward by Sir Dingle Foot in the criminal trial before Raja Azlan Shah J. (as he then was) reported in [1971] 2 M.L.J. page 108 where the learned judge said —

"...In England it can now be taken as established that in order to constitute sedition the words complained of are themselves of such a nature as to be likely to incite violence, tumult or public disorder. I can find no justification for this contention. The opinion of the Judicial Committee of the Privy Council in *Wallace-Johnson v. The King*⁽²⁾ demonstrated the need to apply our own sedition law although there is close resemblance at some points between the terms of our sedition law and the statement of the English law of sedition. I can find of no better reason than that of Strachey J. who pointed out in *Queen Empress v. Balagangadhar Tilak*⁽³⁾ that the Indian law of sedition which is found in section 124A of the Indian Penal Code (which is quite similar to section 3(1) of our Sedition Act) is a statutory offence and differs in that respect from its English counterpart which is a common law misdemeanour elaborated by the decisions of the judges. The English common law of sedition was received in Australia but the offence is now statutory. The statutory definitions of sedition which are to be found in the Crimes Act 1914-1946 of Australia are almost identical with the common law definition and yet in the prevailing decision in *Burns v. Ransley*,⁽⁴⁾ Latham C.J. found it unnecessary to consider the common law of sedition. In my view there is a good deal to be said for the enlightened view. Although it is well to say that our sedition law had its source, if not its equivalent from English soil, its waters had, since its inception in 1948, flowed in different streams. I do not think it necessary to consider the matter in great detail because I have been compelled to come to the conclusion that it is impossible to spell out any requirement of intention to incite violence, tumult or public disorder in order to constitute sedition under the Sedition Act. The words of sub-section (3) of section 3 of our Sedition Act and the subject-matter with which it deals repel any suggestion that such intention is an essential ingredient of the offence.

I reject the liberal interpretation of the provisions of section 124A of the Indian Penal Code as adopted by courts in India which brought the Indian law of sedition at par with English law. (See *Niharendu Majumdar v. King Emperor*;⁽⁵⁾ *Kedar Nath v. State of Bihar*⁽⁶⁾). I rely on the strict and literal interpretation as adopted by the Privy Council cases: see *Tilak's case*, *supra*; *Wallace-Johnson*, *supra*; *King Emperor v. Sadashiv Narayan*⁽⁷⁾."

The learned judge went on to say that once it is proved that the words complained of were spoken, the author "will be conclusively presumed to have intended the natural consequences of his verbal acts and it is therefore sufficient if his words have a tendency to produce any of the consequences stated in section 3(1) of the Act. It is immaterial whether or not the words

complained of could have the effect of producing or did in fact produce any of the consequences enumerated in the section. It is also immaterial whether the impugned words were true or false. [See *Queen Empress v. Ambra Prasad*⁽⁸⁾]." The learned judge added that it was not open for the author "to say that he did not intend his words to bear the meaning which they naturally bear. [See *Maniben v. Emperor*⁽⁹⁾]."

I have reviewed the cases cited by Encik Yeap and it is my finding that in the light of the provisions contained in the Act, I respectfully subscribe to the views expressed by His Lordship Raja Azlan Shah J. and I see no reason whatever to disagree with the interpretation that he has placed upon the relevant provisions of the Act. There is indeed nothing that I can usefully add.

As for the prosecution case, all that the prosecution have to prove, and that indeed they have done, is that the accused was the publisher of the offensive article. The only remaining question for me to decide is whether the words contained therein have a tendency to produce any of the consequences enumerated under subsection (1) of section 3.

Before I proceed any further, I shall direct my mind to Encik Yeap's submission concerning freedom of speech and expression. The court, he said, must decide where the light of freedom of speech recedes and the darkness of sedition begins. In his view, so long as free men breathe, there would be dissent and dissent must either find expression through peaceful but unpleasant words or action as in a street demonstration.

A short answer may, I think, be found in the judgment of Raja Azlan Shah J. where His Lordship said —

"The right to free speech ceases at the point where it comes within the mischief of section 3 of the Sedition Act."

Speaking of the freedom of speech and expression, Encik Yeap said that this is the right of every citizen and it is guaranteed by our Constitution, the supreme law of the country. That may well be, although I do not conceive it can ever be seriously suggested that such right to freedom of speech and expression is absolute. Clause (2)(a) of Article 10, for example, clearly empowers Parliament to impose, by law, "such restrictions as it deems necessary or expedient in the interests of the security of the Federation ... public order or morality. ..." While I quite agree that there is no ambiguity in regard to this aspect of the citizen's fundamental liberty, there is equally no ambiguity that the right is subject to certain restrictions that Parliament may by law impose. It simply means that one is free to say or express as one pleases so long as one does not offend the provisions of such law.

I will not profess that I am qualified to question the wisdom of Parliament for enacting particular legislation. This, I think, is a matter for the elected representatives to decide whether Malaysia, with her multi-racial society, and in view of the composition of her people, there is a need for a legislation, in the interests of security, to adequately and effectively deal with those words which are expressive of a tendency not to promote peace but to excite illwill and hostility. There

must be adequate provision to effectively extinguish a spark without waiting for it to enkindle a flame. We have witnessed a tragic incident and I have no doubt it is the earnest hope of every peace-loving citizen that he may not live to witness yet another incident or even a spark that may enkindle a fire that would burst into a sweeping and destructive conflagration.

Certain utterances tend to endanger public peace and security and threaten breaches of public order. The threat or danger of such utterances cannot be said to be less real and substantial just because the effect of a given utterance cannot be accurately foreseen.

The purpose of my observation is to stress the necessity to appreciate the background, the circumstances under which and the purpose for which our Sedition Act has been enacted and the objectives it hopes to achieve. The Act is no way directed at any law-abiding citizen, nor is it directed at those whose words are expressive of only a tendency to point out errors or defects in the Government or Constitution as by law established, even though the condemnation may be couched in the strongest possible language. It is lawful and not actionable so long as the criticism is fair and temperate. It is evident from the Act that the Government like the court or any other institution, does not enjoy immunity from fair criticism. However, I am constrained to say that fair criticism however strong would not infringe that Act unless the words used have a tendency to produce any of the consequences set out in sub-section (1) of section 3.

Raja Azlan Shah J. spoke of a line that must be drawn between the right to freedom of speech and sedition. The court draws that line. May I respectfully add that once such line is drawn, this should provide enough caution to persons embarking upon the path of criticism. The court cannot, however, be expected, in drawing such line, to weigh the right to freedom of speech and sedition as though it is measuring it in the nice balance of a jeweller's scale. Suffice if the court could expound some principle by which a citizen may be guided as to when the light of freedom of speech recedes and the darkness of sedition begins. May I again borrow the words of Raja Azlan Shah J. who said that the speech is caught by sub-section (1) of section (3) of the Act if read as a whole "used naturally, clearly and indubitably, has the tendency of stirring up hatred, or contempt against the Government."

It is, I think, appropriate at this point, that I proceed to deal with the facts. Encik Yeap was at pains, going through the article paragraph by paragraph, to show what the author meant or had intended when he uttered those words. By applying such an approach, Encik Yeap perhaps hoped to water down what would otherwise be a bitter and scurrilous attack against the Government. I fail to envisage that an ordinary reader would endeavour to analyse paragraph by paragraph and interpret each paragraph in isolation to determine its meaning. One would normally read an article as a whole and it is the impression that the reader is conveyed with after reading the whole of such article, that is really relevant. The

A court must, therefore, apply the same approach in order to decide whether the article, read as such, is expressive of a seditious tendency.

As for the article in question, from the very first paragraph, the author expressed contempt towards the Government when he spoke of the detention of Lim Kit Siang and the arbitrary arrest by the Government. The author attributed the arrest and detention to the "mindless over-reaction" on the part of the Government. The author then went on to smack at the democratic system as practised by the Government. Under the cloak of racial integration and purporting to give reasons as to why the Government was not making headway in the creation of a Malaysian identity, he made allegations such that they were calculated to excite disaffection against the Alliance Government for practising a policy of segregation. Upon this note, the author proceeded to demonstrate by illustrations of "Evidence Galore" of the Alliance policy of segregation. In making constant references to "one ethnic group" he phrased his words so cleverly that no reader will be left with any doubt which group he was referring to. To my mind, the words used were calculated to produce illwill and enmity between the races and sufficient to excite or produce hatred or disaffection against the Government. It was abundantly clear that the intention of the author was to expose what he alleged to be the Government's misdeeds when he highlighted the so-called "Evidence Galore" of Government partial treatment in favour of one ethnic group. The tone of the speech and the words used were such that the author knew or ought to have known, that they would create or excite feelings of contempt, hatred or enmity between the different races and would produce disaffection in the minds of the other group against the Government. Even if the court should construe with a somewhat larger latitude, the utterances, read as a whole, will not fail to convey to an ordinary reader, whatever, the exact meaning these imputations may have, the impression or feeling that all that the Government was concerned with was to cater, not for the benefit of all poor Malaysians, but only for the Malays. The article clearly contains specific and general charge of partiality and the same theme runs right through. Using carefully chosen words, cleverly phrased, the author blatantly accused the people in high places, referring obviously to the Alliance Ministers, of "pilihkasih." The sole object was to show that what the Government was interested in was only to provide "comfortable shady places" for the Malays and "hot uncomfortable places" for the others. The author has, in my view, and indeed it is my finding, touched on the question of the special rights of the Malays, a sensitive issue which the Act has clearly and absolutely prohibited that it be raised.

I It is my finding that the speech read as a whole, even accepting it in a somewhat larger and broader latitude of the type of criticism expected from the leader of an opposition party making a speech political in nature, and, bearing in mind the limits governing the right to freedom of speech and expression, I entertain no doubt whatever, that it has gone beyond what is sanctioned by law and has in fact a seditious tendency.

In considering the guilt of the accused, I have taken into consideration the testimony given by the accused himself. While he contended that the article contained criticism which he regarded as fair comment, he did not seem to challenge that he published it. Dr. Ooi who testified for the defence, explained at length not only the object of his criticism but also the meaning he had in mind when he uttered those words. In view of what I stated earlier, I am not satisfied that there is any merit whatever in the defence. In my judgment, the accused is guilty and I do convict him of the offence charged.

In considering the appropriate sentence to be passed, I have taken into consideration the plea of mitigation made by Encik Yeap.

The offence carries a maximum sentence of fine not exceeding \$5,000 and imprisonment for a term not exceeding three years or both fine and imprisonment. In my judgment, a fine would suffice having regard to the circumstances of this case. I therefore impose a fine of \$2,000 in default 6 months imprisonment.

Order accordingly.

Solicitors: Yeap & Co.

DIRECTOR-GENERAL OF INLAND REVENUE v. C.

[A.C.J. (Gill C.J. (Malaya)) January 18, 1975]

[Kuala Lumpur — Originating Motion No. 61 of 1972]

Income Tax — Termination of service — Payment of compensation — Whether compensation for loss of employment or gratuity in respect of having or exercising employment — Income Tax Act, 1967, s. 13(1)(a) & (e) and Sch. 6, para. 15(1)(b).

The respondent had been employed as a Regional Officer by the Malayan Planting Industries Employers' Association initially for a period of three years and then subsequently for two further terms of duty of two years each. The respondent was informed that owing to the impending dissolution of the association and its replacement by a new body his services might be terminated, and if continuation of employment in the new organisation was not offered to him, the association would pay him the sum of \$30,000/- as compensation for loss of office. The respondent was not offered employment and he became eligible to receive the sum of \$30,000/-. The sum of \$10,222.61 was retained as income tax payable by the respondent. On appeal to the Special Commissioners, it was held that the sum of \$30,000/- was paid to the appellant as compensation for loss of employment within the meaning of section 13(1)(e) of the Income Tax Act and was assessable for tax subject to exemption under paragraph 15(1)(b) of Schedule 6 to the Act. It was therefore ordered that the assessment be amended accordingly. The Director-General of Inland Revenue appealed by way of case stated.

Held, dismissing the appeal: the Special Commissioners were right in deciding that the sum of \$30,000 awarded to the respondent was compensation for loss of employment and therefore liable to income tax under section 13(1)(e) but subject to the exemption under paragraph 15(1)(b) of Schedule 6 to the Income Tax Act, 1967.

Cases referred to:-

- (1) *Chibbett v. Joseph Robinson & Sons* (1924) 9 T.C. 48.
- (2) *Comptroller-General of Inland Revenue v. I.* [1972] 2 M.L.J. 73.
- (3) *H. v. Comptroller-General of Inland Revenue* [1974] 2 M.L.J. 134.

A CASE STATED.

Mohamed Nizar bin Idris (Senior Federal Counsel) for the appellant.

Respondent unrepresented and absent.

Gill C.J.: This is an appeal by way of case stated by the Special Commissioners of Income Tax on the requisition of the appellant under para. 34 of Schedule 5 to the Income Tax Act, 1967.

The question to be determined in the appeal is whether the sum of \$30,000 received by the respondent in September 1968 upon the termination of his employment with the Malayan Planting Industries Employers' Association (hereinafter referred to as MPIEA) is liable to income tax under the Income Tax Act, 1967.

The respondent was appointed as a Regional Officer by the MPIEA as from 31st October 1960. His appointment in the first instance was for a period of three years with an overseas leave entitlement of six months at the end thereof. His employment was loosely described as a contract, and at some later stage, as a tour. On the expiry of his leave following on the completion of his first tour of duty, the appellant was re-engaged for a two-year tour followed by an overseas leave of four months. On the completion of his second tour and leave, the respondent commenced his third tour on 1st September 1966.

By a letter dated 15th October 1966 the executive president of MPIEA informed the respondent that immediate steps were being taken for the dissolution of MPIEA and the setting up of a new body to be known as Malayan Agriculture Producers' Association (hereinafter referred to as MAPA) to perform the functions previously undertaken by MPIEA. It was also proposed to set up an advisory service for MAPA with similar functions as hereto performed by the original staff of MPIEA. The letter went on to say that if continuation of employment in the proposed MAPA advisory service was not offered to the respondent or if such offer was not accepted by him, MPIEA would, among other things, pay him a sum of \$30,000 as compensation for loss of office consequent upon the dissolution of MPIEA. MPIEA was dissolved in December 1966, and a trust fund was created to meet its liabilities and other commitments including that of paying compensation to the respondent and other officers affected by the dissolution of MPIEA.

By a letter dated 29th December 1966, the respondent was informed of the setting up of MAPA advisory service and was given a formal notice of termination of employment by MPIEA to end "as at 31st March 1967." The letter went on to state that the notice would in no way affect the decision notified to him by the letter of 15th October 1966 as regards payment of compensation for loss of employment. By the same letter the respondent was offered temporary employment by MAPA until 31st March 1967 "payment for which will be on M.P.I.E.A. account."

On 17th January 1967 Mr. Perera as director of MAPA wrote to the respondent offering him a temporary appointment as an Industrial Relations Officer in the MAPA Regional Service from 1st April 1967 to 31st August 1968. This would complete the respondent's current tour of two years which he had